



13 DEC 2002

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

Daniel R. Kimbell  
CHRISTIE, PARKER & HALE  
P.O. Box 7068  
Pasadena, CA 91109-7068

In re Application of  
LI et al : DECISION ON  
Application No.: 09/423,401 :  
PCT No.: NA : PETITION  
Int. Filing Date: NA :  
Priority Date: 06 November 1998 : UNDER 37 CFR 1.182  
Attorney's Docket No.: 36368/DRK :  
For: METHOD OR SELECTIVE POST-  
GROWTH TUNING OF AN OPTICAL  
BANDGAP OR A SEMI-CONDUCTOR  
HETEROSTRUCTURE AND PRODUCTS  
PRODUCED THEREFORE : AND  
: UNDER 37 CFR 1.181

This is in response to applicant's petitions under 37 CFR 1.182, "PETITION UNDER 37 C.F.R. 1.182 TO CONVERT TO AN APPLICATION UNDER 35 U.S.C. 111(a)," and 37 CFR 1.181 "PETITION TO THE COMMISSIONER UNDER 37 C.F.R. 1.181" faxed to the United States Patent and Trademark Office (USPTO) on 26 November 2002 requesting that the above referenced application be converted from a national stage application filed under 35 U.S.C. 371 to a national application filed under U.S.C. 111(a) and that the petition was timely filed on 10 August 2000.

#### BACKGROUND

On 31 July 2000, this Office mailed a Communication to applicants informing them that they had not provided an international application number(PCT number), or the international filing date with the transmittal letter.

On 10 August 2000, applicants allegedly filed a petition that the above referenced application be converted from a national stage application filed under 35 U.S.C. 371 to a national application filed under U.S.C. 111(a).

On 26 November 2002, petitioner submitted the instant facsimile, which included copies of the papers filed on 10 August 2000. In support of the request, petitioner has provided a copy of the returned/stamped receipt card acknowledging a receipt date of 10 August 2000.

**I. PETITION UNDER 37 CFR 1.181**

The postcard lists the items submitted on 10 August 2000.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard is accepted as *prima facie* that a petition under 37 C.F.R. 1.182 the application from a filing under 35 U.S.C. 371 to an application under 35 U.S.C. 111(a) was timely filed with the Patent and Trademark Office on 10 August 2000.

The petition under 37 CFR 1.181 is **GRANTED**.

**II. PETITION UNDER 37 CFR 1.182**

Applicants state that this application was inadvertently filed along with a PCT transmittal letter, rather than with a direct national stage transmittal letter. They further indicate that the unexecuted Declaration and Power of Attorney accompanying the application correctly indicated that this application was not based upon a PCT application, but rather upon a Singapore patent application No. 9804027-2, with a filing date of 6 November 1998, and that there is no PCT number or international filing date to report.

A review of the file reveals that the filing under 35 U.S.C. 371 was improper for this application, and it should not be treated as a national stage application under 35 U.S.C. 371. Accordingly, it would be appropriate to consider the conversion of the application to an application under 35 U.S.C. 111(a) at this time.

Applicant's petition to convert the application from a filing under 35 U.S.C. 371 to an application under 35 U.S.C. 111(a), can be granted. A certified copy of any priority document must be filed in order to obtain priority benefit under 35 U.S.C. 119.

Any period of adjustment to the term of a patent under 35 U.S.C. 154(b) (May 29, 2000) may be reduced by the period of time beginning on the filing date accorded under 35 U.S.C. 111 and ending on the mailing date of this decision. See 37 CFR 1.704(a).

**CONCLUSION**

As construed above, the petition under 37 CFR 1.182 is **GRANTED**. The 35 U.S.C. 111(a) filing date is **05 November 1999**.

Application No.: 09/423,401

This application is being forward to Office Initial Patent Examination(OIPE) for continued processing.



Rafael Bacares  
PCT Legal Examiner  
PCT Legal Office



Richard Cole  
PCT Legal Examiner  
PCT Legal Office

Telephone: (703) 308-6312

Facsimile: (703) 308-6459